THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 7159 of 1996

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Dated 17-02-2006

Between:

A.Satyanarayana Murthy.

..... PETITIONER

AND

The Commissioner for Co-operation & Registrar of Co-operatative Societies, A.P. Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 7159 of 1996

O R D E R:

Aggrieved by the action of the third respondent in terminating the services of the petitioner, vide proceedings dated 11.11.1995, for not attending duty regularly and in absconding from duty, the present writ petition is filed.

Facts, to the extent necessary for this writ petition, are that the petitioner was engaged as an Attender-cum-Salesman by the Managing Committee of the fourth respondent-society, vide resolution dated 30-11-1993, and was paid a salary of Rs.600/- per month. According to the petitioner, he was ill and had applied for leave

from 05-10-1995. Instead of leave being sanctioned, a show cause notice dated 30-09-1995 was issued proposing to terminate his services, to which the petitioner submitted his reply on 12-10-1995. Not satisfied with his explanation, the third respondent is said to have terminated his services, vide proceedings dated 11-11-1995.

It is necessary to take note of the fact that the third respondent is the President of the fourth respondent-society
i.e. Nathavaram Primary Agricultural Co-operative Society Limited. While the first and second respondents are the Officers employed by the Government of Andhra Pradesh, it is the third and fourth respondents, whose orders are alone questioned in this writ petition and against whom alone relief is sought for.

A counter affidavit is filed on behalf of the fourth respondent, wherein it is stated that the petitioner was not appointed as
Attender-cum-Salesman either on regular or temporary basis, that the previous management of the fourth respondent, shortly prior to expiry of its tenure, had created papers/resolutions as if the petitioner had been appointed from November, 1993. It is stated that no post was sanctioned by the second respondent. Reference is made to the staffing pattern of the fourth respondent society, whereunder one post of Secretary, a Clerk-cum-Supervisor and Attender alone had been sanctioned. It is stated that the petitioner had managed to get appointed with the collusion of former Management Committee, that he was appointed only as a contingent worker as evidenced in the cash vouchers, that his services were availed depending upon the necessity, that the President of former Management Committee is closely related to the petitioner, (being the grand son of natural sister of the wife of the then president), and that records were created to unduly favour the petitioner. It is stated that the petitioner's appointment did not have prior approval as required under 116-C of the
A.P. Co-operative Societies Act and that the Commissioner and Registrar of Co-operative Societies, vide letter dated
02-01-1995, had directed societies not to make any further recruitment of staff. It is further stated that the second respondent issued proceedings dated 23-08-1994 directing societies to remove persons appointed irregularly either on daily-wage or contingent basis or by any other mode. Consequent upon the proceedings of the second respondent, the petitioner's services were terminated. It is also stated that the financial position of the fourth respondent society is extremely poor and that

there is no work to engage the services of the petitioner. Allegations that two individuals were appointed as attenders on daily wages basis are denied. It is stated that depending on exigency, two persons were engaged as clerks at Rs.25/- per day. It is stated that the petitioner has been working as incharge of the branch of Horlicks Factory at Nathavaram on a remuneration of Rs.1,500/- p.m., and since the questions involved in this writ petition give rise to several complicated questions of fact, the proper forum for adjudication is under the A.P. Shops and Establishments Act.

On being specifically asked as to how a writ petition was maintainable against a Co-operative Society, which is not an instrumentality of the State, Sri Abhinand Kumar, learned counsel appearing on behalf of Sri Nooty Ram Mohan Rao, learned counsel for the petitioner would place reliance on **Harbanslal Sahnia v. Indian Oil Corpn. Ltd**. **A.Uma Rani v. Registrar, Coop. Societies** ; **Zee Telefilms Ltd. v. Union of India** and **Sadhu Varahala Babu v. Government of A.P**..

In **A. Umarani** (1 supra), while examining the question as to whether a Co-operative Society, under the Tamil Nadu
Co-operative Societies Act, was a 'State' within the meaning of Article 12 of the Constitution of India, the Supreme Court held thus:

> "Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the nodal center functions and supervision of the cooperative society, the State has no administrative control over its day-to-day affairs. The State has not created any post nor could it do so on its own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularization of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time."

While a writ petition would be maintainable for violation of statutory provisions, it is not even the case of the petitioners herein that some statutory provision has been violated by the respondents.

In **Zee Telefilms** (2 supra), the question which arose for consideration was as

to whether the Board of Control for Cricket in India was an instrumentality of the State within the meaning of Article 12 and the Supreme Court held as under:

"Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence, there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case, the activities of the Board do not come under the guidelines laid down by this Court in *Pradeep Kumar Biswas case* hence there is force in the contention of Mr.Venugopal that this petition under Article 32 of the Constitution is not maintainable."

It is thus clear that when a private body exercises public functions, even if it is not a State, a writ petition under Article 226 of the Constitution of India would lie. Respondents 3 and 4 do not exercise any public functions. The fourth respondent is a Primary Agricultural Co-operative Society, formed for the benefit of its members and does not exercise any public functions, which can be said to affect the public at large. The third respondent is the President of the fourth respondent society and does not discharge any public duty.

In **SADHU VARAHALA BABU** (3 supra), this Court on a conspectus of earlier judgments, summarized its conclusions as under:

"The co-operative societies are established under the A.P.
Co-operative Societies Act, 1964. The rules regarding the functioning of the societies were framed from time to time giving statutory recognition. The bye-laws of the societies are also given statutory flavour on account of their enforcement after getting approval from the Registrar of Co-operative Societies. Though the authorities of the State are not directly involving in the ordinary functioning of the societies, the authorities under the statute are regulating the functioning of the societies by fixing the staffing pattern, regulating the expenditure towards establishment charges, supervising the elections to the respective

societies, conducting audit of the accounts of the societies, instructing the concerned authorities to take disciplinary actions against the erring officials and to reduce the members of the establishment in tune with the ceiling provided under the Act. In the first set of decisions mentioned in the aforementioned paragraphs, though the Courts held that a cooperative society is not a “State” or “other authority” under Article 12 of the Constitution, they did not put any embargo for treating it as “an authority” mentioned under Article 226 of the Constitution and for issuing necessary directions by invoking powers under Article 226 of the Constitution. The second set of decisions are to the effect that a cooperative society would also come within the purview of Article 12 of the Constitution. Keeping in view the above trend of decisions rendered by various Courts, I wish to summarise as under:

1. Article 226 empowers the High Court to issue writs to ‘persons’ or ‘authorities’ to enforce ordinary rights.

2. An order can be issued against private persons by granting appropriate relief under Article 226 of the Constitution.

3. Even if a society cannot be characterized as a “State” within the meaning of Article 12, a writ would lie against it to enforce a statutory public duty.

4. In the matter of termination of service of the employees of a cooperative society, Section 47 of the A.P.Shops and Establishments Act provides a certain protection and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by the High Court under Article 226 of the Constitution.

5. A writ can be maintained under Article 226 if there is flagrant violation of the principles of natural justice, which are required to be followed under a statute.

6. The power of the High Court is not confined only to issue of writs to a public authority. It can also issue directions to enforce any of the fundamental rights or for any other purpose.

7. The scope of Article 226 has been widened by maintaining the writ petition against other authorities and persons also.

8. Mandamus under Article 226 may issue even to a private person or a body regarded as a government instrumentality even when it is incorporated or registered under a statute viz., a co-operative society or a limited company.

In the light of the above findings, I hold that even if a co-operative society is not treated as a “State” within the scope of Article 12 of the Constitution, it can be treated as “an authority” for the purpose of Article 226 of the Constitution and, therefore, a writ against a co-operative society under Article 226 of the Constitution of India can be maintained.

In this context, reference is made to **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**, wherein the Supreme Court held thus:

"The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

As held in **Pradeep Kumar Biswas** (5 supra) it is only if, in the light of the cumulative facts as established, the body is financially functionally and administratively dominated by or under the control of the Government, would it be an instrumentality of the State under Article 12 of the Constitution of India. Such control must be particular to the body in question and must be pervasive. If the control is merely regulatory, whether under a statute or otherwise, it would not serve to make the body a State.

While it is no doubt true that the Co-operative Societies in the State of Andhra Pradesh are regulated by the provisions of the Andhra Pradesh Co-operative Societies Act, the regulatory provisions of the Act would not make the fourth respondent-society a 'State' within the meaning of Article 12 of the Constitution of India. It is only if the fourth respondent-society is held as being financially, functionally and administratively dominated by or under the control of the Government, would it be an instrumentality of the State within the meaning of Article 12. Since none of the aforesaid tests are satisfied, the fourth respondent-society cannot be said a 'State' within the meaning of Article 12.

It is not even the case of the petitioner that termination of his services is contrary to any statutory provision. In this context, reference is made to **Vst Industries Ltd. v. Vst Industries Workers' Union**, wherein the Supreme Court held that only in the circumstances when the authority or the person performs a public function or discharges a public duty, can the jurisdiction of this Court under Article 226 of the Constitution be invoked. It was further held that a public duty is one which

is owed to the public in general and not specifically to any person or group of persons, that the damage that would be caused in not observing them must be immense and if part of the conditions of service of a workman is violated, there was no justification in holding that such activity will amount to public duty.

Since in the case on hand, it is not even the case of the petitioner that any public duty was cast on third and fourth respondents not to terminate his services, the writ petition as filed is not maintainable.

The writ petition fails and is accordingly dismissed. There shall however be order as to costs.

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17-02-2006

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